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HOUSE BILL 190

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Gail Chasey

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

~~[A.] When a defendant has been convicted of a capital felony, [he] the defendant shall be [punished by life imprisonment or death. The punishment shall be imposed after a sentencing hearing separate from the trial or guilty plea proceeding. However, if the defendant has not reached the age of majority at the time of the commission of the capital felony for which he was convicted, he may be sentenced to life~~

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1 ~~imprisonment but shall not be punished by death.~~

2 ~~B. In the event the death penalty in a capital~~
3 ~~felony case is held to be unconstitutional or otherwise~~
4 ~~invalidated by the supreme court of the state of New Mexico or~~
5 ~~the supreme court of the United States, the person previously~~
6 ~~sentenced to death for a capital felony shall be] sentenced to~~
7 life imprisonment or life imprisonment without possibility of
8 release or parole."

9 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
10 Chapter 24, Section 2, as amended) is amended to read:

11 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
12 LIFE IMPRISONMENT--EXCEPTION.--

13 A. When a defendant is convicted of a third violent
14 felony, and each violent felony conviction is part of a
15 separate transaction or occurrence, and at least the third
16 violent felony conviction is in New Mexico, the defendant
17 shall, in addition to the sentence imposed for the third
18 violent conviction [~~when that sentence does not result in~~
19 ~~death~~], be punished by a sentence of life imprisonment. The
20 life imprisonment sentence shall be subject to parole pursuant
21 to the provisions of Section 31-21-10 NMSA 1978.

22 B. The sentence of life imprisonment shall be
23 imposed after a sentencing hearing, separate from the trial or
24 guilty plea proceeding resulting in the third violent felony
25 conviction, pursuant to the provisions of Section 31-18-24 NMSA

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1 1978.

2 C. For the purpose of this section, a violent
3 felony conviction incurred by a defendant before ~~[he]~~ the
4 defendant reaches the age of eighteen shall not count as a
5 violent felony conviction.

6 D. When a defendant has a felony conviction from
7 another state, the felony conviction shall be considered a
8 violent felony for the purposes of the Criminal Sentencing Act
9 if that crime would be considered a violent felony in New
10 Mexico.

11 E. As used in the Criminal Sentencing Act:

12 (1) "great bodily harm" means an injury to the
13 person that creates a high probability of death or that causes
14 serious disfigurement or that results in permanent loss or
15 impairment of the function of any member or organ of the body;
16 and

17 (2) "violent felony" means:

18 (a) murder in the first or second
19 degree, as provided in Section 30-2-1 NMSA 1978;

20 (b) shooting at or from a motor vehicle
21 resulting in great bodily harm, as provided in Subsection B of
22 Section 30-3-8 NMSA 1978;

23 (c) kidnapping resulting in great bodily
24 harm inflicted upon the victim by ~~[his]~~ the victim's captor, as
25 provided in Subsection B of Section 30-4-1 NMSA 1978; ~~[and]~~

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1 (d) criminal sexual penetration, as
2 provided in Subsection C or Paragraph (5) or (6) of Subsection
3 D of Section 30-9-11 NMSA 1978; and

4 (e) robbery while armed with a deadly
5 weapon resulting in great bodily harm as provided in Section
6 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
7 1978."

8 Section 3. Section 31-20A-2 NMSA 1978 (being Laws 1979,
9 Chapter 150, Section 3) is amended to read:

10 "31-20A-2. DETERMINATION OF SENTENCE.--

11 ~~[A. Capital sentencing deliberations shall be~~
12 ~~guided by the following considerations:~~

13 ~~(1) whether aggravating circumstances exist as~~
14 ~~enumerated in Section 6 of this act~~

15 ~~(2) whether mitigating circumstances exist as~~
16 ~~enumerated in Section 7 of this act and~~

17 ~~(3) whether other mitigating circumstances~~
18 ~~exist.~~

19 ~~B. After weighing the aggravating circumstances and~~
20 ~~the mitigating circumstances, weighing them against each other,~~
21 ~~and considering both the defendant and the crime, the jury or~~
22 ~~judge shall determine whether the defendant should be sentenced~~
23 ~~to death or life imprisonment] If a jury finds, beyond a~~
24 ~~reasonable doubt, that one or more aggravating circumstances~~
25 ~~exist, as unencumbered in Section 31-20A-5 NMSA 1978, the~~

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1 defendant shall be sentenced to life imprisonment without
2 possibility of release or parole. If the jury does not make
3 the required finding that one or more aggravating circumstances
4 exist, the defendant shall be sentenced to life imprisonment."

5 Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980,
6 Chapter 28, Section 1, as amended) is amended to read:

7 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

8 A. An inmate of an institution who was sentenced to
9 life imprisonment as the result of the commission of a capital
10 felony, who was sentenced to life imprisonment as the result of
11 a conviction for a first degree felony resulting in the death
12 of a child, who was convicted of three violent felonies and
13 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
14 or who was convicted of two violent sexual offenses and
15 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
16 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
17 parole hearing after [~~he~~] the inmate has served thirty years of
18 [~~his~~] the inmate's sentence. Before ordering the parole of an
19 inmate sentenced to life imprisonment, the board shall:

20 (1) interview the inmate at the institution
21 where [~~he~~] the inmate is committed;

22 (2) consider all pertinent information
23 concerning the inmate, including:

- 24 (a) the circumstances of the offense;
25 (b) mitigating and aggravating

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1 circumstances;

2 (c) whether a deadly weapon was used in
3 the commission of the offense;

4 (d) whether the inmate is a habitual
5 offender;

6 (e) the reports filed under Section
7 31-21-9 NMSA 1978; and

8 (f) the reports of such physical and
9 mental examinations as have been made while in an institution;

10 (3) make a finding that a parole is in the
11 best interest of society and the inmate; and

12 (4) make a finding that the inmate is able and
13 willing to fulfill the obligations of a law-abiding citizen.

14 If parole is denied, the inmate sentenced to life
15 imprisonment shall again become entitled to a parole hearing at
16 two-year intervals. The board may, on its own motion, reopen
17 any case in which a hearing has already been granted and parole
18 denied.

19 B. Unless the board finds that it is in the best
20 interest of society and the parolee to reduce the period of
21 parole, a person who was convicted of a capital felony and
22 sentenced to life imprisonment shall be required to undergo a
23 minimum period of parole of five years. During the period of
24 parole, the person shall be under the guidance and supervision
25 of the board.

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1 C. An inmate of an institution who was sentenced to
2 life imprisonment without possibility of release or parole is
3 not eligible for parole and shall remain incarcerated for the
4 entirety of the inmate's natural life.

5 ~~[G.]~~ D. Except for sex offenders as provided in
6 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
7 first, second or third degree felony and who has served the
8 sentence of imprisonment imposed by the court in an institution
9 designated by the corrections department shall be required to
10 undergo a two-year period of parole. An inmate who was
11 convicted of a fourth degree felony and who has served the
12 sentence of imprisonment imposed by the court in an institution
13 designated by the corrections department shall be required to
14 undergo a one-year period of parole. During the period of
15 parole, the person shall be under the guidance and supervision
16 of the board.

17 ~~[D. Every]~~ E. A person ~~[while]~~ who is on parole
18 shall remain in the legal custody of the institution from which
19 ~~[he]~~ the person was released, but shall be subject to the
20 orders of the board. The board shall furnish to each inmate as
21 a prerequisite to ~~[his]~~ the inmate's release under its
22 supervision a written statement of the conditions of parole
23 that shall be accepted and agreed to by the inmate as evidenced
24 by ~~[his]~~ the inmate's signature affixed to a duplicate copy to
25 be retained in the files of the board. The board shall also

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1 require as a prerequisite to release the submission and
2 approval of a parole plan. If an inmate refuses to affix [~~his~~]
3 the inmate's signature to the written statement of the
4 conditions of [~~his~~] the inmate's parole or does not have an
5 approved parole plan, [~~he~~] the inmate shall not be released and
6 shall remain in the custody of the institution in which [~~he~~]
7 the inmate has served [~~his~~] the inmate's sentence, excepting
8 parole, until such time as the period of parole [~~he~~] the inmate
9 was required to serve, less meritorious deductions, if any,
10 expires, at which time [~~he~~] the inmate shall be released from
11 that institution without parole, or until such time that [~~he~~]
12 the inmate evidences [~~his~~] acceptance and agreement to the
13 conditions of parole as required or receives approval for [~~his~~]
14 the inmate's parole plan or both. Time served from the date
15 that an inmate refuses to accept and agree to the conditions of
16 parole or fails to receive approval for [~~his~~] the inmate's
17 parole plan shall reduce the period, if any, to be served under
18 parole at a later date. If the district court has ordered that
19 the inmate make restitution to a victim as provided in Section
20 31-17-1 NMSA 1978, the board shall include restitution as a
21 condition of parole. The board shall also personally apprise
22 the inmate of the conditions of parole and [~~his~~] the inmate's
23 duties relating thereto.

24 [~~E.~~] F. When a person on parole has performed the
25 obligations of [~~his~~] the person's release for the period of

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1 parole provided in this section, the board shall make a final
2 order of discharge and issue [~~him~~] the person a certificate of
3 discharge.

4 [~~F-~~] G. Pursuant to the provisions of Section
5 31-18-15 NMSA 1978, the board shall require the inmate as a
6 condition of parole:

7 (1) to pay the actual costs of [~~his~~] parole
8 services to the adult probation and parole division of the
9 corrections department for deposit to the corrections
10 department intensive supervision fund not exceeding one
11 thousand eight hundred dollars (\$1,800) annually to be paid in
12 monthly installments of not less than twenty-five dollars
13 (\$25.00) and not more than one hundred fifty dollars (\$150), as
14 set by the appropriate district supervisor of the adult
15 probation and parole division, based upon the financial
16 circumstances of the defendant. The defendant's payment of the
17 supervised parole costs shall not be waived unless the board
18 holds an evidentiary hearing and finds that the defendant is
19 unable to pay the costs. If the board waives the defendant's
20 payment of the supervised parole costs and the defendant's
21 financial circumstances subsequently change so that the
22 defendant is able to pay the costs, the appropriate district
23 supervisor of the adult probation and parole division shall
24 advise the board and the board shall hold an evidentiary
25 hearing to determine whether the waiver should be rescinded;

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1 and

2 (2) to reimburse a law enforcement agency or
3 local crime stopper program for the amount of any reward paid
4 by the agency or program for information leading to ~~[his]~~ the
5 inmate's arrest, prosecution or conviction.

6 [~~G.~~] H. The provisions of this section shall
7 apply to all inmates except geriatric, permanently
8 incapacitated and terminally ill inmates eligible for the
9 medical and geriatric parole program as provided by the
10 Parole Board Act."

11 Section 5. REPEAL.--Sections 31-14-1 through 31-14-16,
12 31-18-14.1, 31-20A-1, 31-20A-2.1 through 31-20A-4 and 31-20A-
13 6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through
14 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter
15 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4,
16 Laws 1929, Chapter 69, Sections 12 and 13, Laws 2001, Chapter
17 128, Section 1, Laws 1979, Chapter 150, Section 2, Laws 1991,
18 Chapter 30, Section 1, Laws 1979, Chapter 150, Section 4, 5
19 and 7, as amended) are repealed.

20 Section 6. APPLICABILITY.--The provisions of this act
21 apply to crimes committed on or after July 1, 2007.

22 Section 7. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2007.